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**IN THE
COURT OF APPEALS OF INDIANA**

TREASA SMALLWOOD and JASON A.)	
SMALLWOOD,)	
)	
Appellants-Respondents,)	
)	
vs.)	No. 18A02-0611-JV-1062
)	
INDIANA DEPARTMENT OF CHILD SERVICES)	
)	
Appellee-Petitioner,)	

APPEAL FROM THE DELAWARE CIRCUIT COURT
The Honorable Richard A. Dailey, Judge
Cause Nos. 18C02-0604-JT-32; 18C02-0604-JT-33; 18C02-0604-JT-34; & 18C02-0604-JT-35

July 18, 2007

MEMORANDUM DECISION – NOT FOR PUBLICATION

MATHIAS, Judge

Treasa Smallwood (“Mother”) and Jason A. Smallwood (“Father”) each appeal from orders of the Delaware Circuit Court terminating their parental rights, raising the following restated issue: whether the Delaware County Division of Family and Children (“DFC”) presented sufficient evidence to sustain the termination of their parental rights. We affirm.

Facts and Procedural History

Mother and Father are the natural parents of K.S., born in 2003, and G.S., born in 2005. Mother also had two older children: T.G., born in 1995, and B.B., born in 1998. On May 6, 2004, DFC filed a petition alleging K.S. to be a CHINS. Ex. Vol., Petitioner’s Ex. 30. DFC filed CHINS petitions as to G.S., T.G., and B.B. on May 26, 2005, alleging that Mother was using cocaine, the children were not being supervised, and infant G.S. had tested positive for cocaine. Ex. Vol., Pet.’s Exs. 2, 16, 46. The trial court adjudicated the children CHINS.

As a result of Mother and Father’s failure to comply with court-ordered services, DFC filed petitions to terminate Father’s parental rights as to K.S. and G.S. and Mother’s parental rights as to all four children. Following a fact-finding hearing on August 28, 2006, the trial court entered four orders terminating Mother’s and Father’s parental rights. They now appeal. Additional facts will be provided as necessary.

Standard of Review

In deference to the trial court’s unique position to assess the evidence, when reviewing termination proceedings on appeal, we will neither reweigh the evidence, nor judge the credibility of witnesses. In re M.M., 733 N.E.2d 6, 11 (Ind. Ct. App. 2000).

We will consider only the evidence most favorable to the trial court's judgment and the reasonable inferences to be drawn therefrom. Id. at 12. Where the trial court has entered findings of fact, we will not set aside the trial court's findings and judgment unless they are clearly erroneous. Id. "A finding is clearly erroneous when there are no facts or inferences drawn therefrom which support it." In re B.D.J., 728 N.E.2d 195, 199 (Ind. Ct. App. 2000) (quoting Matter of D.G., 702 N.E.2d 777, 780 (Ind. Ct. App. 1998)). If the evidence supports the trial court's decision, we must affirm. In re T.F., 743 N.E.2d 766, 773 (Ind. Ct. App. 2001), trans. denied.

Discussion and Decision

The involuntary termination of parental rights is the most extreme sanction a court can impose; therefore, termination is intended as a last resort, available only when all other reasonable efforts have failed. Id. "The purpose of terminating parental rights is not to punish parents but to protect their children." In re M.M., 733 N.E.2d at 12 (quoting In re A.N.J., 690 N.E.2d 716, 720 (Ind. Ct. App. 1997)). Parents have a constitutionally protected interest in the right to establish homes and raise their children; however, those rights may be terminated when parents are unwilling or unable to meet their parental responsibilities. In re T.F., 743 N.E.2d at 773. Parents' rights are subordinate to the interest of protecting the welfare of the child in determining an appropriate disposition of a petition to terminate parental rights. In re M.M., 733 N.E.2d at 12.

Termination of a parent-child relationship is proper where the child's emotional and physical development is threatened. In re A.A.C., 682 N.E.2d 542, 544 (Ind. Ct.

App. 1997). The trial court need not wait until the child is irreversibly harmed such that his or her physical, mental, and social development is permanently impaired before terminating the parent-child relationship. Id. A parent's habitual pattern of conduct is relevant to determine whether there is a substantial probability of future neglect or deprivation of the child. In re M.M., 733 N.E.2d at 13.

To effect the involuntary termination of a parent-child relationship, the DFC must establish that:

- (A) one (1) of the following exists:
 - (i) the child has been removed from the parent for at least six (6) months under a dispositional decree;
 - (ii) a court has entered a finding under IC 31-34-21-5.6 that reasonable efforts for family preservation or reunification are not required, including a description of the court's finding, the date of the finding, and the manner in which the finding was made;
 - (iii) after July 1, 1999, the child has been removed from the parent and has been under the supervision of a county office of family and children for at least fifteen (15) months of the most recent twenty-two (22) months;
- (B) there is a reasonable probability that:
 - (i) the conditions that resulted in the child's removal or the reasons for placement outside the home of the parents will not be remedied;
 - or
 - (ii) the continuation of the parent-child relationship poses a threat to the well-being of the child;
- (C) termination is in the best interest of the child; and
- (D) there is a satisfactory plan for the care and treatment of the child.

Ind. Code § 31-35-2-4(b)(2) (1998 & Supp. 2004). The DFC must establish these elements by clear and convincing evidence. In re L.S., 717 N.E.2d 204, 208 (Ind. Ct. App. 1999), trans. denied.

I. Mother

Mother argues that DFC presented insufficient evidence to support the trial court's determinations that there is a reasonable probability that the conditions that resulted in the children's removal will not be remedied, that the continuation of the parent-child relationship poses a threat to the well-being of the children, and that termination was in the best interests of the children.

Initially, we note that Indiana Code section 31-35-2-4(b)(2)(B) is written in the disjunctive, and thus requires the DFC to establish by clear and convincing evidence only one of the two requirements of subparagraph (B). Termination was proper if the DFC established that the conditions leading to removal would probably not be remedied or that the continuation of the parent-child relationship posed a threat to the children. The trial court concluded that DFC proved both of these requirements. However, for our review, we only need to find that the evidence supports one of the requirements. Therefore, we turn to review whether the evidence supports the finding that there was a reasonable probability that the conditions leading to the removal or reasons for placement outside of the home will not be remedied.

The trial court was presented with testimony from various service providers who had worked with the family. Bruce Rector, Mother's substance abuse counselor, testified that Mother had been ordered to participate in counseling for cocaine and alcohol abuse while pregnant with G.S. He also testified that Mother had sustained "episodes of four to five months where she's been able to stay clean[,] but had relapsed approximately four times since May 2005." Tr. pp. 32-33, 45. Rector described Mother's pattern of

behavior as “one of having difficulty getting into recovery and maintaining the chemically free lifestyle.” Tr. p. 32. This evidence is sufficient to sustain the trial court’s finding that there is a reasonable probability that the conditions which resulted in the children’s removal would not be remedied.

Mother also argues that insufficient evidence was presented to sustain the trial court’s finding that termination was in the best interests of the children. T.G. and B.B.’s therapist testified that when she first began seeing T.G., he would bang his head, threaten to hurt or kill himself, and display “a lot of confusion, anger, opposition.” Tr. p. 60. Since visits with Mother had been suspended, T.G. has made “[i]ncredible progress” with his behavioral issues. Tr. p. 61. She also testified that T.G. experiences extreme anxiety caused by concerns over Mother’s drug abuse and incarceration. Tr. p. 71. The children’s therapist also testified that B.B. had experienced “significant flashbacks and nightmares” and expressed fears of being left alone with Mother. Tr. pp. 63, 73.

G.S. and K.S.’s foster mother testified that she had cared for G.S. since he was eighteen days old, that he tested positive for cocaine at birth and experienced tremors, and as a result, had received physical and occupational therapy. Tr. pp. 76, 78. She also testified that initially K.S. would pull her hair, scratch herself, and bang her head on walls, but that these behaviors subsided when visits with Mother stopped. Tr. p. 105. The family’s visitation supervisor testified that Mother repeatedly missed scheduled visitations, sometimes because she was incarcerated, which would leave the older children emotionally “devastated.” Tr. pp. 93, 100.

Finally, the children's CASA echoed the opinions offered by the service providers and testified that the children needed "a stable, solid environment" and that termination was in their best interests. Tr. p. 198. In determining what is in the best interests of the children, the trial court is "required to look beyond the factors identified by the office of family and children, and to look to the totality of the evidence." In re J.W., 779 N.E.2d 954, 962 (Ind. Ct. App. 2002), trans. denied (quoting In re T.F., 743 N.E.2d at 776). In doing so, the trial court must subordinate the interests of the parents to those of the children. Id. The trial court need not wait until the children are irreversibly influenced such that their physical, mental, and social growth is permanently impaired before terminating the parent-child relationship. Id. "A parent's historical inability to provide adequate housing, stability and supervision coupled with a current inability to provide the same will support a finding that continuation of the parent-child relationship is contrary to the child's best interests." In re D.V.H., 604 N.E.2d 634, 638 (Ind. Ct. App. 1992), trans. denied. The DFC presented sufficient evidence to sustain the trial court's finding that termination is in the children's best interests.

II. Father

Father argues that evidence was insufficient to support the termination of his parental rights because there was no showing that he had abused the children. He makes no specific reference to the elements of the termination statute, but rather argues that the evidence presented indicated that he was "making efforts to improve himself[] and was availing himself of services offered in connection with the [] proceedings." Br. of Appellant-Father at 7.

At the hearing, the trial court was presented with testimony from Bruce Rector that Father failed to complete treatment for his anger management issues, that he failed to complete the aftercare portion of his February 2006 drug addiction treatment program, and that Father displayed minimal progress in treatment due to his frequent incarcerations. Tr. pp. 34-36. In addition, the family case manager testified that Father had not been able to maintain employment or a stable home. Tr. pp. 138, 140-41. Father essentially asks that we reweigh the evidence, which we will not do.

Finally, Father also argues that the trial court based its finding that he had a lengthy criminal history on improperly admitted evidence, namely several chronological case summaries from the Delaware Circuit and Muncie City Courts. See Ex. Vol., Pet.'s Exs. 55-60. However, the trial court admitted the exhibits "solely for the purpose of what they say in them[,] [n]ot to indicate his criminal history because I don't believe they tell whether he's guilty basically." Tr. pp. 124-25. Father himself testified about his incarcerations in Henry and Delaware Counties, that he was currently on home detention, and that he intended to plead guilty to theft in a pending case. Tr. pp. 179-80, 187. Therefore, any error in the admission of the chronological case summaries was harmless.

Conclusion

Sufficient evidence was presented to sustain the termination of Mother and Father's parental rights.

Affirmed.

DARDEN, J., and KIRSCH, J., concur.